U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A71 792 683 - New York

Date: APR 28 1997

In re: MORRIE CAMARA, Beneficiary of visa petition filed by
MAUREEN E. WILLIAMS, Petitioner

IN VISA PETITION PROCEEDINGS

INDEX

APPEAL

ON BEHALF OF PETITIONER: Irving Edelman, Esquire
55 John Street
New York, New York 10038

ON BEHALF OF SERVICE: Rosalind K. Malloy
General Attorney

APPLICATION: Petition to classify status of alien relative for issuance of immigrant visa

The petitioner appeals from the acting district director's decision denying the visa petition she filed on the beneficiary's behalf pursuant to section 201(b)(2)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1151(b)(2)(A)(i). The appeal will be dismissed.

The beneficiary is a native and citizen of the Gambia. He married the petitioner, a naturalized United States citizen, on May 21, 1993. On June 22, 1993, the beneficiary's spouse filed a visa petition (Form I-130) on his behalf. In support of the visa petition, the petitioner submitted copies of the beneficiary's birth certificate, the petitioner's certificate of citizenship, and the couple's certificate of marriage.

The record reflects that the petitioner and beneficiary, along with their counsel, appeared at the Immigration and Naturalization Service's district office on November 9, 1994, for an interview in accordance with Stokes v. INS, No. 74 Civ. 1022 (S.D.N.Y. November 10, 1976) .[1] At that interview, the immigration examiner asked the couple several times if they would agree to a "Stokes" interview. Each time, counsel for the petitioner and beneficiary denied permission for such an interview. The attorney claimed that once the petitioner proved that her marriage to the beneficiary was valid under the laws of New York, the burden shifted to the Service to show that the marriage between the petitioner and beneficiary was not bona fide.

1/ The Immigration and Naturalization Service claims in its appellate brief that the petitioner and beneficiary first appeared at the district office for an interview on August 30, 1993. However, no transcript from that interview or any other evidence showing that an interview took place any time before the interview on November 9, 1994, was in the record.

Because the immigration examiner disagreed with this interpretation of the law, the petitioner's attorney refused to allow the examiner to interview his clients. The scheduled interview was terminated when the petitioner and beneficiary walked out of the interview room with their attorney.

In visa petition proceedings, the petitioner must establish eligibility for the immigration benefit sought by a preponderance of the evidence. Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966). For a visa petition filed on behalf of a spouse, the petitioner must show that the marriage entered into with the beneficiary was not entered into for the purpose of gaining an immigration benefit. 8 C.F.R. § 204.2(a)(1)(ii); Matter of Laureano, 19 I&N Dec. 1 (BIA 1983).

On appeal, the petitioner, through counsel, argues that the acting district director is not complying with the requirements set forth in the judgment in Stokes v. INS, supra. Specifically, the petitioner refers to paragraph 11 of that judgment, which states,

> The I-130 petitioner has the burden to prove that the marriage is valid in accordance with the applicable law of the jurisdiction where it was entered into. Thereupon, the burden shifts to the Service to prove that the marriage is nonetheless not one which legally merits approval of the petition.

Stokes v. INS, supra, at 6.

We note, however, that paragraph 9 of that judgment reiterates immigration case law and regulations stating that the petitioner has the "overall burden of proving eligibility" for the immediate relative status sought. Id.; Lokko v. INS, 594 F. Supp. 623, 628 (S.D.N.Y. 1984); 8 C.F.R. § 204.2; Matter of Brantigan, supra. If the Service presents evidence that the marriage is not valid for immigration purposes, then the petitioner must be given a chance to rebut the adverse evidence. Matter of Soriano, 19 I&N Dec. 764 (BIA 1988).

In this case, we find that the petition has not established eligibility for the immigration benefit sought. The petitioner submitted documents to show that a marriage took place between her and the beneficiary and that it was valid under the laws of New York. However, the petitioner submitted no evidence establishing that her marriage with the beneficiary was not entered into for immigration purposes. See Lutwak v. United States, 344 U.S. 604 (1953); Matter of Laureano, supra; Matter of McKee, 17 I&N Dec. 332 (BIA 1980). Because, through their attorney, the petitioner and beneficiary refused to allow the Service to question them, the Service was unable to determine the bona fides of the marriage. We note that paragraph 11 of Stokes v. INS, supra, further states that the couple's failure to answer questions asked by the Service may result in their failure to satisfy their overall burden. Id. at 6. As the documentary evidence submitted was insufficient, and no other evidence was presented, we find that the petitioner has failed to sustain her burden of establishing eligibility for the immigration benefit sought. This decision is without prejudice to the filing of a new visa petition should the petitioner be able to provide further evidence of the claimed relationship.

A71 792 683

ORDER: The appeal is dismissed.

Lauren R. Mathon
FOR THE BOARD